

**R-W Service System, Inc. and W & T Cartage Co.
and Local 124, International Brotherhood of
Teamsters, AFL-CIO. Cases 7-CA-33260 and
7-CA-33261**

November 25, 1992

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

Upon charges filed by Local 124, International Brotherhood of Teamsters, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing on June 30, 1992, against R-W Service System, Inc. (Respondent R-W) and W & T Cartage Co. (Respondent W & T), or jointly the Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and the consolidated complaint, the Respondents have failed to file answers.

On October 19, 1992, the General Counsel filed a Motion for Summary Judgment. On October 21, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The consolidated complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Consolidated Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the acting regional attorney, by letter dated July 17, 1992, notified the Respondents that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file timely answers, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent R-W, a corporation with an office and place of business in Taylor, Michigan, has been engaged in the interstate and intrastate transportation of freight. Respondent R-W's Taylor terminal located at 20225 Goddard Road, Taylor, Michigan, is its only facility involved herein. During the year ending December 31, 1991, Respondent R-W derived gross revenue in excess of \$50,000 for the transportation of freight from the State of Michigan directly to points outside the State of Michigan. We find that Respondent R-W is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent W & T, a corporation with an office and place of business in Taylor, Michigan, has been engaged in the intrastate transportation of freight. Respondent W & T's Taylor, Michigan terminal located at 20225 Goddard Road, Taylor, Michigan, is its only facility involved in this proceeding. During the year ending December 31, 1991, Respondent W & T provided services valued in excess of \$50,000 to Ford Motor Company and Chrysler Corporation, each of which enterprises are located within the State of Michigan and directly engaged in interstate commerce. We find that Respondent W & T is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Recognition: Respondent R-W

The following employees of Respondent R-W constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time truck drivers employed at and out of Respondent R-W's terminal in Taylor, Michigan; but excluding office clerical employees, mechanics, guards and supervisors as defined in the Act.

For many years the Union has been the designated exclusive collective-bargaining representative of the employees in the R-W bargaining unit and since then has been recognized as such by Respondent R-W. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 1991, through March 31, 1992, and continuing thereafter. Based on Section 9(a) of the Act, the Union has been the exclusive collec-

tive-bargaining representative of the R-W bargaining unit.

Recognition: Respondent W & T

The following employees of Respondent W & T constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time truck drivers employed at and out of Respondent W & T's terminal in Taylor, Michigan; but excluding office clerical employees, mechanics, guards and supervisors as defined in the Act.

For many years the Union has been the designated exclusive collective-bargaining representative of the employees in the W & T bargaining unit and since then has been recognized as such by Respondent W & T. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 1991, through March 31, 1992. Based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the W & T bargaining unit.

Failure to Honor Terms of Respective Agreements

The Respondents have failed to honor the terms of their respective collective-bargaining agreements as follows:

1. Since on or about November 11, 1991, the Respondents have failed to make pension benefit contributions.
2. From about November 11 through December 1, 1991, and from January 15, 1992, to date, the Respondents have failed to make health insurance contributions.
3. Since about December 1, 1991, the Respondents have failed to pay employees the equipment lease fees.
4. Since about January 4, 1992, the Respondents have failed to pay drivers' wages.
5. Since January 1991, the Respondents have failed to remit union dues.

The subjects described above are mandatory subjects of bargaining. The Respondents took the actions described above without prior notice to and/or bargaining with the Union and without specific consent of the Union.

CONCLUSIONS OF LAW

By failure to honor their collective-bargaining agreements by failing to make pension benefit contributions, failing to make health insurance contributions, failing to pay employees the equipment lease fees, failing to pay drivers' wages, and failing to remit union dues to the Union, the Respondents have engaged in unfair labor practices affecting commerce within the meaning

of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondents have violated Section 8(a)(5) and (1) by failing to make contractually required payments for pension and health insurance, we shall order the Respondents to make whole their unit employees by making all payments that have not been made and that would have been made but for the Respondents' unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondents shall reimburse unit employees for any expenses ensuing from their failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall also order the Respondents to make their employees whole with interest as prescribed in *New Horizons*, supra, for failure to pay unit employees the equipment lease fees and drivers' wages. This shall also include reimbursement for any expenses ensuing from failure to pay the equipment lease fees and drivers' wages. Finally, we shall order the Respondents to remit to the Union deducted union dues and fees owed for those unit employees who had authorized the Respondent to deduct and remit them to the Union pursuant to the parties' respective collective-bargaining agreements, with interest as computed under *New Horizons*, supra.

ORDER

The National Labor Relations Board orders that Respondent R-W Service System, Inc. and Respondent W & T Cartage Co., Taylor, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to honor the terms of their respective collective-bargaining agreements by failing to make pension contributions, failing to make health insurance contributions, failing to pay employees the equipment lease fees, failing to pay drivers' wages, and failing to remit union dues.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of their respective collective-bargaining agreements by making contractually required pension benefit contributions, health insurance contributions, paying employees equipment lease fees, paying drivers' wages, and remitting union dues.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at their respective facilities in Taylor, Michigan, copies of the attached notices marked "Appendix A" (for Respondent R-W) and "Appendix B" (for Respondent W & T).¹ Copies of the notices, on forms provided by the Regional Director for Region 7, after being signed respectively by Respondent R-W's authorized representative and Respondent W & T's authorized representative, shall be posted by Respondent R-W and Respondent W & T immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent R-W and Respondent W & T to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent R-W and Respondent W & T have taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to honor the terms of our collective-bargaining agreement with Local 124, International Brotherhood of Teamsters, AFL-CIO, by failing to make pension benefit contributions, failing to make health insurance contributions, failing to pay em-

ployees their equipment lease fees, failing to pay drivers' wages, and failing to remit union dues.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of our collective-bargaining agreement by making pension benefit contributions, making health insurance contributions, paying employees their equipment lease fees, paying drivers' wages, and remitting union dues.

WE WILL make our employees whole for any expenses ensuing from our failure to make pension benefit contributions and health insurance contributions and from our failure to pay equipment lease fees and drivers' wages.

WE WILL remit union dues to the Union pursuant to the terms of the collective-bargaining agreement.

R-W SERVICE SYSTEM, INC.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
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WE WILL honor the terms of our collective-bargaining agreement by making pension benefit contributions, making health insurance contributions, paying employees their equipment lease fees, paying drivers' wages, and remitting union dues.

WE WILL make our employees whole for any expenses ensuing from our failure to make pension benefit contributions and health insurance contributions and from our failure to pay equipment lease fees and drivers' wages.

WE WILL remit union dues to the Union pursuant to the terms of the collective-bargaining agreement.

W & T CARTAGE CO.